

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ST. LOUIS HEART CENTER, INC., individually
and on behalf of all others similarly-situated,
Plaintiff,

v.

VEIN CENTERS FOR EXCELLENCE, INC.,

Defendant.

Cause No. 4:12-cv-00174 CDP

DECLARATION OF BARRY CLARK

PURSUANT TO 28 U.S.C. § 1746

1. I am not a party in this matter.
2. I have personal knowledge of the facts and matters stated herein and can competently testify to same.
3. I am currently employed as President of Westfax, Inc. ("Westfax") and have held that position since 1999.
4. I have reviewed the attached documents that represent 10 Westfax invoices for account number 4438 and billed to Vein Centers for Excellence ("Vein Centers"). These invoices indicate Westfax billed Vein Centers for 35,212 broadcasts between 1/21/2008 and 9/21/2009.
5. In all cases, Vein Centers solely determined the content of the documents to be broadcasted in each Order.
6. In all cases, Vein Centers solely determined the data (lists of numbers) to which the content of the documents would be broadcasted.

7. Westfax used an automated computer-based fax broadcasting system to broadcast the Vein Center Orders set forth in the invoices. This system automatically broadcasts the content provided by Vein Centers to the data (list of numbers) provided by Vein Centers. The system is programmed to use standard T.30 fax protocols to handshake with the receiving fax machines and then transmit the content to the recipient's machine, computer or other device. The system bills Vein Centers each time transmission of the content is completed without any interruption or termination of the transmission. Westfax has no records or knowledge of the recipients' machines, computers, other devices or software or whether the data transmitted was actually printed by any of the recipients' machines, computers or other devices. The criteria used by the system is to only bill for a transmission when the transmission of the content is completed without any interruption or termination during the transmission. Westfax does not bill for fax transmissions that were sent but not completely received.

8. If one fax was sent out it may have been a test fax sent to Vein Centers and is not included in the total listed above.

9. Each invoice contains a number in the column labeled "QUANTITY" which represents the number of broadcasts (fax transmissions) Westfax billed Vein Centers for that Order.

10. The amount Westfax charged for each broadcast referred to in Paragraph 7 is set out in the "ITEM DESCRIPTION" column as "Rate=\$0.03 per page."

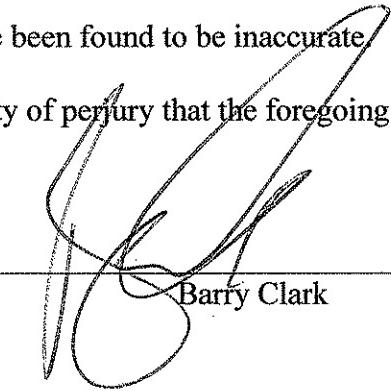
11. The column labeled "AMOUNT" is the amount Westfax billed for that Order, and is calculated by multiplying the QUANTITY by the Rate for that Order.

12. Where an invoice identifies "Attempt=", that number represents the number of broadcasts Westfax attempted on behalf of Vein Centers for that Order.

13. Westfax's system has the capability to "dedupe" or remove duplicate numbers from the data provided by customers before broadcasting their Orders. Westfax's regular practice was to dedup lists provided by customers, but Westfax has no knowledge that it removed any duplicate numbers from any particular Vein Centers Orders.

14. Westfax relies on the records produced by its computer-based fax broadcasting system as important business records and takes reasonable efforts to ensure their accuracy. I am not aware of any evidence, nor do I have any reason to believe that the records provided by Westfax for this lawsuit have been found to be inaccurate.

I declare under penalty of perjury that the foregoing is true and correct.



Barry Clark



REMIT TO:

**DEPARTMENT #1733
DENVER, CO 80291-1733**

**TEL: (303) 299-9329
FAX: (303) 299-9309**

Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	1/21/2008	102775

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Date: 1/15/2008 Job: BFX-00159117 PO: General Vascualt Surgeon Attempt=6758 Pages=1 Rate=\$0.03 per page.	5,449.0	163.47

Please include invoice number(s) on your check.

TOTAL 163.47



REMIT TO:

**DEPARTMENT #1733
DENVER, CO 80291-1733**

BILL TO:

Vein Centers for Excellence
Attn: David Kohler
1350 Baur Blvd.
St. Louis, MO 63132

**TEL: (303) 299-9329
FAX: (303) 299-9309**

Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	3/17/2008	107090

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Date: 3/11/2008 Job: BFX-00178682 PO: General/Vascular Surgeon Attempt=6758 Pages=1 Rate=\$0.03 per page.	5,416.0	162.48

Please include invoice number(s) on your check.

TOTAL 162.48



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Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	6/16/2008	113645

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Date: 6/11/2008 Job: BFX-00198425 Name: Revised Fax General Vascu PO: Attempt=6758 Pages=1 Rate=\$0.03 per page.	5,327.0	159.81

Please include invoice number(s) on your check.

TOTAL 159.81



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Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	8/18/2008	887144

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Date: 8/11/2008 Job: BFX-10308130 Name: OB GYN Fax PO: Attempt=1854 Pages=1 Rate=\$0.03 per page.	1,590.0	47.70

Please include invoice number(s) on your check.

TOTAL 47.70



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Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	8/25/2008	887808

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Date: 8/19/2008 Job: BFX-10310026 Name: Derm Fax PO: Attempt=879 Pages=1 Rate=\$0.03 per page.	781.0	23.43

Please include invoice number(s) on your check.

TOTAL 23.43



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St. Louis, MO 63132

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Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	9/22/2008	889877

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Date: 9/16/2008 Job: BFX-10316603 Name: Vein Directory PO: Attempt=1157 Pages=1 Rate=\$0.03 per page.	917.0	27.51
Date: 9/8/2008 Job: BFX-10314548 Name: PO: Attempt=1 Pages=1 Rate=\$0.03 per page.	1.0	0.03

Please include invoice number(s) on your check.

TOTAL 27.54



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Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	10/6/2008	891038

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Date: 10/3/2008 Job: BFX-10321122 Name: PO: Attempt=1 Pages=1 Rate=\$0.03 per page.	1.0	0.03
Date: 10/2/2008 Job: BFX-10320915 Name: PO: Attempt=1 Pages=1 Rate=\$0.03 per page.	1.0	0.03

Please include invoice number(s) on your check.

TOTAL 0.06



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Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	10/13/2008	891469

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Date: 10/7/2008 Job: BFX-10321657 Name: General Vascular Surgeon IPO: Attempt=6758 Pages=1 Rate=\$0.03 per page.	5,234.0	157.02

Please include invoice number(s) on your check.

TOTAL 157.02



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Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	11/17/2008	895748

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Broadcast Fax Per Page Normal VEINCENT - Date: 11/11/2008 Job: BFX-00245531 Name: Vein Directory	811.0	24.33

*Please include invoice number(s) on your check.

TOTAL 24.33



BILL TO:

Vein Centers for Excellence
Attn: David Kohler
1350 Baur Blvd.
St. Louis, MO 63132

REMIT TO:

**5690 DTC BLVD., SUITE 670
GREENWOOD VILLAGE, CO
80111**

TEL: (303) 299-9329
FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4438	9/21/2009	928703

Terms

Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Broadcast Fax Per Page Normal VEINCENT - Date: 9/9/2009 Job: BFX-00394473 Name: Legs take you everywhere - Test	1.0	0.03
Broadcast Fax Per Page Normal VEINCENT - Date: 9/15/2009 Job: BFX-00402314 Name: Legs take you everywhere - Legs take you everywher	4,975.0	149.25
Broadcast Fax Per Page Normal VEINCENT - Date: 9/15/2009 Job: BFX-00402313 Name: Legs take you everywhere - Legs take you everywher	4,712.0	141.36

*Please include invoice number(s) on your check.

TOTAL 290.64